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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,957	09/25/2003	Jon C. Marine	MAT 315	9433
23581	7590	10/26/2005	EXAMINER	
KOLISCH HARTWELL, P.C. 520 S.W. YAMHILL STREET SUITE 200 PORTLAND, OR 97204			CEGIELNIK, URZULA M	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tak

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/672,957	MARINE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Urszula M. Cegielnik	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 December 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-6 and 8-48 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 5,6 and 25-48 is/are allowed.
- 6) Claim(s) 4,8,13,14,18 and 19 is/are rejected.
- 7) Claim(s) 9-12,15-17 and 20-24 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>03/21/2005</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 14, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Stadlbauer.

Stadlbauer a body (32) adapted to function in a plurality of modes, including a first mode imitating a first persona (a forward motion of a walking dog), and a second mode imitating a second persona (leg raising of a dog relieving itself); a manual actuator (74) adapted to change a function of the body between the first mode and the second mode; and at least one appendage (13) rotatably connected and adapted to move relative to the body (col. 4, lines 35-39), the manual actuator (74) is incorporated in the at least one appendage (13), and the manual actuator is actuated by moving the at least one appendage (13) from a first position to a second position (col. 4, lines 35-39), the body includes a posterior end (92), the at least one appendage (13) includes a leg (i.e. hind leg 13) adjacent to the posterior end (92), the leg includes a foot , the leg may be rotated to assume a plurality of rotational positions relative to the body (col. 4, lines 35-39) and the manual actuator (74) is incorporated in the leg (i.e. is operably coupled) and the manual actuator is actuated by moving the leg from a first position to a second position (col. 4, lines 35-39).

Claims 8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Smirnov.

Smirnov discloses a body (1); at least one sensor (28), including at least one transition sensor (mode selection circuit 28 - one of a set of mechanical switches or jumpers, paragraph 0034, lines 1-2) ; a controller (21) adapted to function in a plurality of modes, including a first mode, the controller (21) receiving an input from the at least one sensor (28) and producing an output that causes the body to imitate a first persona; a second mode, the controller receives an input from the at least one sensor and produces an input that causes the body to imitate a second persona; a transition mode, the controller receives an input from the at least one transition sensor and produces output that converts the toy between the first and the second mode; and at least one manual actuator (paragraph 0035, lines 1-4) that activates the at least one transition sensor (28); the at least one transition sensor (mode selection circuit 28) includes a first transition sensor (a first of a set of mechanical switches or jumpers, paragraph 0034, lines 1-2) and a second transition sensor (a second of a set of mechanical switches or jumpers of mode selection circuit), and the at least one manual actuator (6) (paragraph 0035) includes a first manual actuator (6) and a second manual actuator (7); the first manual actuator activates the first transition sensor (a first of a set of mechanical switches or jumpers of mode selection circuit) by sending an input to the controller (paragraph 0034, lines 1-2), the controller then converts the toy between the first mode and the second mode, and the second manual actuator (6) activates the second transition sensor (paragraph 0034, lines 1-2) sending an input to the controller, the

controller (21) then converts the toy from the second mode to the first mode (paragraphs 0031 and 0035).

***Allowable Subject Matter***

Claims 9-12, 15-17, and 20-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5, 6, and 25-48 are allowed.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM - 2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419.

**The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for both regular and After Final communications.**

Urszula M. Cegielnik  
Assistant Examiner

Application/Control Number: 10/672,957  
Art Unit: 3711

Page 5

Art Unit 3711



DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700